

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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IN RE: '318 PATENT INFRINGEMENT LITIGATION

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) C.A. No. 05-356 (KAJ) (consolidated)  
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**DEFENDANTS BARR LABORATORIES, INC. AND BARR PHARMACEUTICALS,  
INC.'S RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS DISMISSING  
PLAINTIFFS' WILLFUL INFRINGEMENT CLAIM OR, IN THE ALTERNATIVE, TO  
BIFURCATE AND STAY DISCOVERY ON SUCH CLAIM**


Defendants Barr Laboratories, Inc. and Barr Pharmaceuticals, Inc., by and through their undersigned counsel, hereby move this Court pursuant to Fed. R. Civ. P. 12(c) for an Order substantially in the form attached hereto dismissing Plaintiffs' willful infringement claim or, in the alternative, to bifurcate and stay discovery on such claim. Defendants Barr Laboratories, Inc. and Barr Pharmaceuticals, Inc. join in Defendant Mylan's Rule 12(c) Motion for Judgment on the Pleadings Dismissing Plaintiffs Willful Infringement Claim or, in the Alternative, to Bifurcate and Stay Discovery on such Claim (D.I. 57) and incorporate by reference herein the Motion, Memorandum (D.I. 58) and Compendium (D.I. 59) in support of the Motion filed by Defendant Mylan. The reasons for disposition raised by Mylan apply equally to Barr Laboratories Inc. and Barr Pharmaceuticals, Inc. As Mylan stated, the binding decision by the Federal Circuit in *Glaxo Group Ltd. v. Apotex, Inc.*, 376 F.3d 1339 (Fed. Cir. 2004) and the recent Delaware cases are dispositive. *See Glaxo*, 376 F.3d at 1350-51 (holding that "the mere fact that a company has filed an ANDA application or certification cannot support a finding of willful infringement for purposes of awarding attorney's fees").

**Dated:** January 9, 2006

Respectfully submitted,

BARR LABORATORIES, INC. and BARR  
PHARMACEUTICALS, INC.

By:

  
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